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THE HONORABLE SHARON L. GLEASON

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8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ALASKA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 vs.
13 JOHN PEARL SMITH, II,
14 Defendant.

No. 16-00086

MOTION FOR DISCOVERY RELATED
TO THE ANCHORAGE
CORRECTIONAL COMPLEX'S
PRACTICE OF MONITORING AND
VIDEOTAPING CONFIDENTIAL
ATTORNEY CLIENT AND DEFENSE
TEAM VISITS WITH THE CLIENT

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17 I. MOTION

18 Comes now the defendant John Pearl Smith, II and seeks an order requiring the
19 Anchorage Correctional Complex and/or the Alaska Department of Corrections to provide
20 the following discovery regarding the practice of monitoring or videotaping of privileged
21 attorney-client meetings in general and specifically as to the monitoring or videotaping of
22 defense team meetings between John Pearl Smith, II and any members of the defense team
23 during visits at the Anchorage Correctional Complex. This request is based on the Sixth
24 Amendment, the Eighth Amendment and the Fourteenth Amendment of the United States
25 Constitution.

MOTION FOR DISCOVERY RELATED TO THE
MONITORING AND VIDEO TAPING OF
MEETINGS BETWEEN SMITH AND HIS
DEFENSE TEAM - 1

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II. FACTS

The Government admits that this practice is taking place in at least one meeting room in the jail. Dkt. 260. Smith notes that the Government simply states that this videotaping is a “uniform security protocol” but provides no copies of any Anchorage Correctional Complex or Department of Corrections policies or manual or other materials regarding this “policy,” how it is administered, who oversees it, and, most importantly, whether and how long the videos are retained and who has access to them. Further the Government has provided no information about monitoring or videotaping of the meetings between Smith and his counsel – which began in June 2016.

III. REQUESTED DISCOVERY

Because the Anchorage Correctional Complex and/or the Alaska Department of Corrections has been violating Smith's Sixth Amendment right to counsel he asks this Court to order the following requested discovery so that he can determine if there has been a structural violation of his Sixth Amendment right to counsel. Once that discovery is provided Smith will ask this Court to hold an evidentiary hearing.

Smith asks the Court to order the following:

1. That the Anchorage Correctional Complex and/or the Alaska Department of Corrections immediately provide to the defense all videotapes of any confidential meetings between Smith and his defense team

2. That the Anchorage Correctional Complex and/or Alaska Department of Corrections disclose all policies regarding surveillance and documentation of meetings between clients and counsel

3. That the Anchorage Correctional Complex and/or the Alaska DOC disclose whether the video monitoring equipment is capable of audio recording.

MOTION FOR DISCOVERY RELATED TO THE
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MEETINGS BETWEEN SMITH AND HIS
DEFENSE TEAM - 2

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4. That the Anchorage Correctional Complex and/or the Alaska DOC disclose how information concerning how the videotapes of meetings between clients is stored.

5. That the Anchorage Correctional Complex and/or the Alaska DOC disclose all policies regarding its security procedures for evaluating which inmates are selected for monitoring of attorney-client meetings.

6. That the Anchorage Correctional Complex and/or the Alaska DOC provide – to the defense only - any recordings, documents, reports or other record of information derived from the surveillance or video-recording of any meeting between Smith and his defense team.

7. That the Court impound any recordings, documents, reports or other record of information derived from the surveillance or video-recording of any meeting between Smith and his defense team. See Rule 41(g)(providing that a person aggrieved by any unlawful search or seizure of property or by the deprivation of property may move its return).

8. That the Anchorage Correctional Complex and/or the Alaska Department of Corrections disclose all agreements, contracts, memorandums of understanding between Alaska and the any federal agency regarding the housing of pretrial federal detainees at the Anchorage Correctional Complex.

IV. CONCLUSION

Based upon the above, the defendant respectfully requests that this Court to order the Anchorage Correctional Complex and/or the Alaska Department of Corrections to provide the requested discovery.

DATED this day of December 2018.

MOTION FOR DISCOVERY RELATED TO THE
MONITORING AND VIDEOTAPING OF
MEETINGS BETWEEN SMITH AND HIS
DEFENSE TEAM - 3

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CERTIFICATE OF SERVICE

I, SUZANNE LEE ELLIOTT, certify that on December , 2018, I filed the foregoing document with the United States District Court's Electronic Case Filing (CM/ECF) system, which will serve one copy by email on Assistant United States Attorneys FRANK V. RUSSO, WILLIAM A. TAYLOR, JAMES NELSON AND KAREN VANDERGAW.

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MOTION FOR DISCOVERY RELATED TO THE
MONITORING AND VIDEO TAPING OF
MEETINGS BETWEEN SMITH AND HIS
DEFENSE TEAM - 4

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